

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN A. SALCIDA,  
Plaintiff,

v.

JOHN THICH, et al.,  
Defendants.

Case No. 5:21-cv-09976 EJD (PR)

**ORDER DISMISSING NON-  
COGNIZABLE CLAIMS; OF  
SERVICE; DIRECTING  
DEFENDANTS TO FILE  
DISPOSITIVE MOTION OR  
NOTICE REGARDING SUCH  
MOTION; INSTRUCTIONS TO  
CLERK**

Plaintiff, a state inmate, filed the instant pro se civil rights action pursuant to 42 U.S.C. § 1983 against prison employees at Salinas Valley State Prison (“SVSP”) where he was formerly incarcerated.<sup>1</sup> Dkt. No. 1. Plaintiff has recently filed a notice of addendum, identifying “John Does 1 to 10” in the complaint. Dkt. No. 10. The Court accepts this filing as a supplemental to the complaint and will proceed with an initial screening. Plaintiff’s motion for leave to proceed in forma pauperis will be addressed in a separate order.

///

///

---

<sup>1</sup> The matter was reassigned to this Court on January 12, 2022. Dkt. No. 7.

## DISCUSSION

### A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See id. § 1915A(b)(1), (2). Pro se pleadings must, however, be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

### B. Plaintiff's Claims

Plaintiff filed a complaint naming numerous Defendants who work at SVSP, alleging they violated his state and federal rights based on a series of retaliatory actions from June through October 2021. Dkt. No. 1-1 at 3-10. The named Defendants are as follows: Warden M. B. Atchley, Officer L. Martin, Complex II Associate Warden C. Medina, Officer P. Estrada, Officer F. Estrada, Associate Warden R. Mojica, Sgt. R. Day of ad-seg, Chief Deputy Warden T. Lemon, and John Doe 1 to 10. Dkt. No. 1 at 2. In the supplement, he asks that the following Defendants replace John Doe 1 to 10 in the complaint: E. Beam, M. B. Atchley, L. Ruiz, R. Mojica, T. Lemon, and P. Estrada. Dkt. No. 10 at 2. Plaintiff lists four claims.

Under claim one, Plaintiff alleges retaliation for exercising his freedom of speech and right to file a grievance, citing “state [and] federal 1st Amendment [and] 4th Amendment,” against Defendants L. Martin, J. Thich, V. Lomeli, and John Doe 1 to 10. Dkt. No. 1-1 at 3. Plaintiff alleges that retaliation began shortly after he was identified as a “snitch witness” for his cellmate in June 2021. Id. After an interview on his cellmate’s

1 behalf, Plaintiff's cell was searched 7-10 times by Defendants L. Martin and John Does 1  
2 to 10, by order of Defendant Sgt. Thich. Id. When Plaintiff complained of the excessive  
3 searches on June 21, 2021, Defendant Thich told him that it was "nice to know staff was  
4 doing their job as order[ed]" and that if Plaintiff wanted the retaliation to stop, he would  
5 have to "check" his cellie or "'f--k her up.'" Id. at 4. Later that month, Plaintiff spoke to  
6 Defendant Lomeli, the facility captain, and informed him that Defendants Thich and  
7 Martin were trying to "get [him] to take off on [his] cellie to get her to stop utilizing the  
8 602 process." Id. Plaintiff alleges that his cell was again searched more than 12 times in  
9 July 2021. Id. Plaintiff again spoke with Defendant Thich, who told Plaintiff that he  
10 would get "what snitches get." Id. Plaintiff then filed a grievance regarding the retaliation.  
11 Id.

12 Under claim two, Plaintiff asserts violations of his First and Eighth Amendment  
13 rights, as well as the "ADA Title II, section 504," based on retaliation and use of excessive  
14 force against Defendants Thich, E. Beam. V. Lomeli, T. Lemon, M. B. Atchley, C.  
15 Medina, L. Martin, P. Estrada, R. Mojica, and John Doe 1 to 10. Dkt. No. 1-1 at 5.  
16 Plaintiff claims that during August 2021, his cell was searched 12 times. Id. On August  
17 11, 2021, Plaintiff claims Defendant Beam sent Defendants Thich, Martin, Estrada, and  
18 John Doe 1 to 10 to trash his cell in retaliation for Plaintiff's involvement in his cellmate's  
19 grievance. Id. Defendants took and destroyed his property, valued at about \$1,200, which  
20 included his "ADA glasses." Id. Plaintiff claims Defendants Thich and Martin told  
21 Plaintiff that he should stop snitching and "f--k-up" his cellmate. Id. Plaintiff claims that  
22 Defendants Estrada and Martin threw him into a holding cell, causing his face to hit the  
23 wall and his nose to bleed; Defendant Thich then kicked Plaintiff in the back. Id. Plaintiff  
24 claims Defendant Thich told Defendant Martin to report Plaintiff as suicidal and keep him  
25 in the cage for 6 to 8 hours without medical attention. Id. at 6. Later, Defendant Beam  
26 informed him that for being a snitch, they had searched his cell and removed a \$200 stove  
27 because "snitches don't get fed." Id. On August 12, 2021, Plaintiff reported the retaliatory  
28 cell searches and the taking of his property to Defendant Lomeli and Medina, who told him

1 that it was his fault for being a witness and they were not getting involved. Id. Twenty  
2 minutes later, Plaintiff's cell was trashed by Defendants Garcia, at the order of Defendant  
3 Beam, who again told Plaintiff to "stop snitching or he would regret it." Id. Plaintiff  
4 claims that on August 16, 2021, his cell got searched again, and Defendants Thich and  
5 Estrada "smack[ed]" him across the face. Id. at 6-7. Plaintiff claims that on August 18,  
6 2021, Defendants Martin, Estrada, and Beam punched him and placed him in ad-seg in  
7 retaliation and once again took what little property he had left. Id. at 7. Plaintiff wrote  
8 several times to Defendants Lemon, Atchley, Mojica, and Medina to intervene and stop the  
9 retaliation "to no avail." Id. When Plaintiff "went to committee" and reported "everything  
10 that was going on" to Defendant Lemon, he was told to stop snitching. Id. Plaintiff was  
11 released to Facility A after he reported having safety concerns against specific inmates and  
12 staff; he also alleged that Defendant Thich was trying to sell cell-phones. Id. Plaintiff  
13 claims Defendants told him to "shut up if you don't want to be found dead." Id.

14 Under claim three, Plaintiff again claims violations under the First and Eighth  
15 Amendments of his right to be free from retaliation and for the failure to protect against  
16 Defendants Estrada, Atchley, Lemon, Medina, Mojica, and John Doe 1 to 10. Id. at 8.  
17 Plaintiff claims that in September 2021, he reported to ICC and Defendant Lemon that he  
18 had safety concerns in Facility A involving inmates and staff, and that if he was released,  
19 he would be in danger. Id. Plaintiff received an RVR (Rules Violation Report) for  
20 refusing to house in Facility A. Id. He claims that when he came out of his cell for a  
21 medical appointment, he was thrown into a van by force, scraping his knees and arms and  
22 hitting his face in the window. Id. He informed the Captain during Unit Classification in  
23 Facility A that he had safety concerns as staff had already threatened to have inmates beat  
24 him up for being a snitch. Id. Plaintiff claims he wrote to Defendants Atchley, Lemon and  
25 Mojica that his life had been threatened, but they refused to investigate or properly process  
26 his grievance. Id. at 8-9. Plaintiff was then assaulted later in September by the inmate  
27 clerk who works for Defendant Estrada; the inmate informed Plaintiff that staff had  
28 threatened him with not going home on time if he did not assault Plaintiff. Id. at 9.

1 Plaintiff was placed in ad-seg and written-up as the aggressor. Id. Plaintiff claims he was  
2 threatened by Defendants to keep his mouth shut about the cell-phone sales and to stop  
3 filing grievances if he did not want to die in ad-seg. Id. Plaintiff claims the threats worked  
4 and he did not pursue a grievance. Id.

5 Lastly, under claim four, Plaintiff claims violations of his First and Eighth  
6 Amendment rights for retaliation and the use of unnecessary force against Defendants Day,  
7 Mojica, and Atchley. Id. at 9. Plaintiff claims that on or about October 14, 2021, he was  
8 interviewed by Defendant Solis about his grievance against Defendants Lomeli and  
9 Medina for their actions on August 12, 2021. Id. After he was escorted from the interview  
10 room, Plaintiff claims Defendant Day came out and told him, “You have to be careful with  
11 this rat,” and then stomped on his ankle, causing swelling and a cut. Id. at 9-10. Plaintiff  
12 reported the incident, which caused more retaliation, including Defendant Day and the  
13 property officer destroying his property. Id. at 10. Plaintiff claims that after he finished a  
14 video interview with Lt. Gomez and the camera was turned off, Defendant Day smacked  
15 him so hard that he fell off the chair. Id. Out of fear that the beatings would get worse,  
16 and he might get killed, Plaintiff claims he did not utilize the 602 process. Id.

17 Liberally construed, Plaintiff’s allegations are sufficient to state claims under the  
18 First Amendment for retaliation based on the multiple cell searches, placement in ad-seg,  
19 and property destruction, and under the Eighth Amendment for the multiple incidences of  
20 excessive force between June through October 2021.

21 However, Plaintiff fails to state a claim under the Fourth Amendment for  
22 unreasonable searches and seizures under claim one. There is no legitimate subjective  
23 expectation of privacy that a prisoner might have in his prison cell and, accordingly, the  
24 Fourth Amendment proscription against unreasonable searches does not apply within the  
25 confines of the prison cell. See Hudson v. Palmer, 468 U.S. 517, 525-26 (1984). The  
26 recognition of privacy rights for prisoners in their individual cells simply cannot be  
27 reconciled with the concept of incarceration and the needs and objectives of penal  
28 institutions. See id. at 526. However, this does not mean that a prisoner is without remedy

1 for maliciously motivated searches or calculated harassment unrelated to prison needs.  
 2 The Eighth Amendment always stands as a protection against cruel and unusual  
 3 punishment. See id. at 528-30. Accordingly, Plaintiff has a sufficient remedy for the  
 4 allegedly malicious cell searches under the Eighth Amendment.

5 Nor has Plaintiff stated sufficient facts to state a claim under the ADA under claim  
 6 two. Title II of the ADA, 42 U.S.C. § 12101 et seq., provides that “no qualified individual  
 7 with a disability shall, by reason of such disability, be excluded from participation in or be  
 8 denied the benefits of the services, programs, or activities of a public entity, or be  
 9 subjected to discrimination by any such entity.” 42 U.S.C. § 12132. Title II protects “a  
 10 qualified individual with a disability.” 42 U.S.C. § 12132. In the context of the ADA, the  
 11 term “disability” means: “(A) a physical or mental impairment that substantially limits one  
 12 or more of the major life activities of the person; (B) having a record of such an  
 13 impairment; or (C) being regarded as having such an impairment.” Id. § 12102(1). For  
 14 purposes of § 12102(a), “major life activities include, but are not limited to, caring for  
 15 oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing,  
 16 lifting, bending, speaking, breathing, learning, reading, concentrating, thinking,  
 17 communicating, and working.” 42 U.S.C. § 12102(2)(A). Here, Plaintiff’s ADA claim  
 18 appears to be based solely on the destruction of his ADA glasses. See supra at 3. There is  
 19 no allegation that Plaintiff has a disability that qualifies under the ADA, or that he was  
 20 excluded from or denied the benefits of any service, program, or activity of the prison.  
 21 Accordingly, Plaintiff’s ADA claim is dismissed for failure to state a cognizable claim.

22 ///

23 ///

## 24 CONCLUSION

25 For the foregoing reasons, the Court orders as follows:

26 1. This action shall proceed on the First and Eighth Amendment claims  
 27 identified above. See supra at 5. The Fourth Amendment and ADA claims are dismissed  
 28 with prejudice for failure to state a claim.

2. The following defendants at SVSP shall be served:

- a. **M. B. Atchley, Warden**
- b. **John Thich, Sergeant**
- c. **L. Martin, Correctional Officer**
- d. **C. Medina, Complex II Associate Warden**
- e. **P. Estrada, Correctional Officer**
- f. **F. Estrada, Correctional Officer**
- g. **R. Mojica, Associate Warden**
- h. **R. Day, Correctional Sgt. Ad-Seg**
- i. **T. Lemon, Chief Deputy Warden**
- j. **E. Beam, Lieutenant**
- k. **Veronica Lomeli, Captain**
- l. **L. Ruiz**

Service on the listed defendant(s) shall proceed under the California Department of Corrections and Rehabilitation's (CDCR) e-service program for civil rights cases from prisoners in CDCR custody. In accordance with the program, the clerk is directed to serve on CDCR via email the following documents: the operative complaint, and any attachments thereto, Dkt. No. 1, the supplemental, Dkt. No. 10, this order of service, and a CDCR Report of E-Service Waiver form. The clerk also shall serve a copy of this order on the plaintiff.

No later than 40 days after service of this order via email on CDCR, CDCR shall provide the court a completed CDCR Report of E-Service Waiver advising the court which defendant(s) listed in this order will be waiving service of process without the need for service by the United States Marshal Service (USMS) and which defendant(s) decline to waive service or could not be reached. CDCR also shall provide a copy of the CDCR Report of E-Service Waiver to the California Attorney General's Office which, within 21 days, shall file with the court a waiver of service of process for the defendant(s) who are waiving service.



1           Upon receipt of the CDCR Report of E-Service Waiver, the clerk shall prepare for  
2 each defendant who has not waived service according to the CDCR Report of E-Service  
3 Waiver a USM-205 Form. The clerk shall provide to the USMS the completed USM-205  
4 forms and copies of this order, the summons and the operative complaint for service upon  
5 each defendant who has not waived service. The clerk also shall provide to the USMS a  
6 copy of the CDCR Report of E-Service Waiver.

7           3.       No later than **ninety-one (91) days** from the date this order is filed,  
8 Defendants shall file a motion for summary judgment or other dispositive motion with  
9 respect to the claims in the complaint found to be cognizable above.

10           a.       Any motion for summary judgment shall be supported by adequate  
11 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of  
12 Civil Procedure. Defendants are advised that summary judgment cannot be granted, nor  
13 qualified immunity found, if material facts are in dispute. If any Defendant is of the  
14 opinion that this case cannot be resolved by summary judgment, he shall so inform the  
15 Court prior to the date the summary judgment motion is due.

16           b.       **In the event Defendants file a motion for summary judgment, the**  
17 **Ninth Circuit has held that Plaintiff must be concurrently provided the appropriate**  
18 **warnings under Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). See**  
19 **Woods v. Carey, 684 F.3d 934, 940 (9th Cir. 2012).**

20           4.       Plaintiff's opposition to the dispositive motion shall be filed with the Court  
21 and served on Defendants no later than **twenty-eight (28) days** from the date Defendants'  
22 motion is filed.

23           Plaintiff is also advised to read Rule 56 of the Federal Rules of Civil Procedure and  
24 Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (holding party opposing summary judgment  
25 must come forward with evidence showing triable issues of material fact on every essential  
26 element of his claim). Plaintiff is cautioned that failure to file an opposition to  
27 Defendants' motion for summary judgment may be deemed to be a consent by Plaintiff to  
28 the granting of the motion, and granting of judgment against Plaintiff without a trial. See



Ghazali v. Moran, 46 F.3d 52, 53–54 (9th Cir. 1995) (per curiam); Brydges v. Lewis, 18 F.3d 651, 653 (9th Cir. 1994).

5. Defendants shall file a reply brief no later than **fourteen (14) days** after Plaintiff's opposition is filed.

6. The motion shall be deemed submitted as of the date the reply brief is due. No hearing will be held on the motion unless the Court so orders at a later date.

7. All communications by the Plaintiff with the Court must be served on Defendants, or Defendants' counsel once counsel has been designated, by mailing a true copy of the document to Defendants or Defendants' counsel.

8. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is required before the parties may conduct discovery.

9. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

10. Extensions of time must be filed no later than the deadline sought to be extended and must be accompanied by a showing of good cause.

**IT IS SO ORDERED.**

**Dated:** July 27, 2022



EDWARD J. DAVILA  
United States District Judge